

COURT OF APPEALS DIVISION II
OF THE STATE OF WASHINGTON

Case No. 46380-6-II

WILLIAM and ARACELI McNEFF, Plaintiff/Respondent,

v.

MARIA JOYCE, Defendant/Appellant

BRIEF OF APPELLANT

Maria Joyce/Pro Se/Defendant

Maria Joyce
PO Box 11
Rosburg, WA 98643-0011

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A. Assignments of error

Assignments of Error

1. The trial court should have allowed my claim of title under Virginia ShirLee Badgers adverse possession. RCW 7.28.070.

Issues Pertaining to Assignments of Error

Whether the trial court erred in not recognizing my Moms title as superior to the Badgers by adverse possession RCW 4.16.020, RCW 7.28.120.

Whether the matter should be remanded for further findings and proceedings or ruled on at this time?

B. Statement of the Case

It may seem as if the history of this title is complex however, this property remained in the name of Harold Badger since his death April 9, 1989. RP 92, Exhibit 18. No will is recorded for Harold and his estate was never probated. Three of his sons survived him. The youngest, Marvin and his wife, ShirLee were living with Harold when he died. RP 93, Exhibit 21. They had the electric bill in their name by May 17, 1989 and began paying taxes in 1990. 13 years later Marvin died, April 20, 2001. RP 92, CP 270, Exhibit 20. He left no will. Probate was attempted but never finalized. RP 154, CP 272.

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January 7, 2002 probate minutes are filed wherein Attorney Daniel Bigelow argues the matter should be before the court in a quiet title action and should not be addressed in the estate. The court suggests it should be noted as a summary judgment and set for trial if needed. RP 154, CP 278. ShirLee had exclusive use, peaceful possession and quiet enjoyment of the 1.18 acres and the 1988 model manufactured home situated on it and continued to pay taxes for another 10 years.

C. Summary of Argument

Plaintiffs sought to quiet title and I cross-claimed for ownership of the property through Moms possession. I plead all of the elements of adverse possession, but I didn't call it that until the presentation of Finding of Fact and Conclusions of Law June 23, 2014. The court acknowledged the adverse possession claim but did not act on it.

D. Argument

June 13, 2011 Virginia ShirLee Badger died in her home of more than 22 years. RP 92-94, Exhibit 19. She had lived there by herself for over 10 years in the manner of a true owner, maintaining the property and paying the real property taxes. This information was provided to the court in uncontested testimony and the court should have entered findings of fact,

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conclusions of law and a judgment quieting title in the estate of Virginia Shirlee Badger to me.

I lived with Mom and Marvin off and on from October 1989, probably a dozen times over the decades. RP 141. Moms' home was my home when I needed a place to stay and this extended to my daughter as well-she even had a bedroom there.

Mom left me a note (on or about August 9, 2009) that the court has reserved. It is ID 29, RP 108-113. She was on her way to the hospital. She went from Columbia Memorial Hospital in Astoria, Oregon directly to Oregon Health Science University in Portland, Oregon. There she underwent an emergency brain surgery. She was diagnosed with lung and brain cancer. Her prognosis was terminal, 18 months. She underwent 15 treatments of radiation therapy. She did 2 rounds of chemo. This note tells me what to do when she is gone. It does describe her possession, use and title as adverse to the Badger family. RP 108-113 and RP 114-116.

It should not matter if I knew Moms possession was adverse or not. It may not have been, while her husband was alive. But under color of title and payment of taxes for 7 years (22 actually) along with the required possession she had met the requirements of RCW 7.28.070 and RCW 4.16.020. Her title is superior to that of Harold Badgers heirs because she met all the conditions of adverse possession. ID 29 conveys her title to me.

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I moved in with Mom again in December 2010. RP 19. She was doing her 2nd round of chemo treatments. She needed help and did not want to go to a nursing home. She wanted to die at home. July 26, 2010 I went to see Attorney Guy Glenn and had a will made for Mom with Power of Attorney and Advance Directive so I could do what she wanted if she could no longer say for herself. When Mom felt a little better, I took her into his office so she could sign it. I did what I thought I should do, because at that point Mom was fighting for her life, and I would have to manage her affairs. RP 85-86 and RP 114-116, Exhibit 28.

Nearly a year later, I asked Mom to fill out the personal property list at the back of the will. RP 83-85, CP 163, Exhibit 17. I remembered the note and knew I would have to deal with her home as well as everything she owned. I asked her how she felt about her house and the things in it. Mom's home meant everything to her. She had to use all her earnings to keep the place from falling apart. She maintained, repaired, improved the property and enjoyed it thoroughly. She had full responsibility for the upkeep and taxes. She called Guy Glenn before her death to change her will, but he was out of the office. The changes would have reflected her wishes more accurately, according to the note she left for me. I wrote in what Mom wanted and added some things I was not able to finalize while caring for her 24 hours a day, 7 days a week. She signed it May 17, 2011. Her will was recorded June 27, 2011. RP 82-86, CP 227-235, Exhibit 9.

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The distinction made between the real and personal property is my own. I have since learned that at some point real and personal estate cannot be separated. I have the right to inherit what my Mom worked for and wanted me to have. RCW 7.28.060. She had the same benefit as the owner who died 22 years before her. RCW 7.28.050. Under RCW 7.28.130, I must defend for the whole of the property-her estate.

I provided the trial court with a certified copy of the real estate contract where Harold and Hazel Badger purchased the property. RP 95-98, Exhibit 22. I believe this is the deed, unless the fire of 1988 destroyed that actual document. I also provided the court with the title to the manufactured home, still in the name of Harold Badger. RP 99, Exhibit 23.

The fact that the Badger family waited until Moms death tells me they believed that she had a right to be there. After the quit claim deeds were recorded it became like a hostile takeover. CP 280-287. At the 72 hour eviction mark, the McNeffs put a double barrel shot-gun in the window of their motor home. At the 60 day mark he fired the shot-gun every hour on the hour for about 12 hours. The actions of the McNeffs frightened me so much that I covered all the windows that I could and crawled on the floor past the ones I couldn't cover.

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August 9, 2012 at 3:27 pm I received a call from a man who identified himself as Officer Howell telling me not to call the cops anymore about the McNeffs shooting into my yard from theirs-scaring me and my dog ROXY. September 21, 2012 at 6:10 pm I called Verizon Wireless Services for a trace and the Law Enforcement Technician said I needed an attorney for a subpoena. The bill showed the call originated from Longview/BWA. Officer Howell says he did not commit this violation of my civil rights.

I began making my reports in Pacific County to Local and State Police because I did not believe that Wahkiakum County Law Enforcement would protect my person or property. I did so until they advised me they would no longer forward my reports.

I have lost 30 pounds since my dog was fatally poisoned on August 14, 2012 she suffered for more than 16 hours. This cost me \$303.50, besides the loss of my much loved, highly valued, extremely well trained Service Animal. I notified the Judge, the Pacific County Police, Wahkiakum County Detective Balch and Attorney David Nelson that she was missing. August 21, 2012 I tried to get a Anti-Harassment Order in District Court No. 2012-4007 and was directed to Superior Court and denied there as well; No.12-2-00074, November 6, 2012. No indictments have occurred for this Class C Felony. I am afraid to go to the property by myself and have not done so since this incident. RP 130. I would not be so intimidated if I had the benefit of some protection under the law. RP 127-128.

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March 26, 2013, after repeated reports to police of water and power being shut off and high power bills while I was not there, the padlock on the emergency shut off for power to the pump-house had been removed and the outlet was damaged. RP 144. I know Mom paid several hundred dollars to have that installed and put the power underground. She did so after the Artic Blast of 2008. The garage had collapsed due to the weight of the snow. RP 139. It also broke a window in the house due to debris. Deputy William Taywater took my report of Malicious Mischief No. 130058. RP 143-144.

April 2014 I found that the padlock on the pump-house had been replaced. This made it impossible for me to access the pump that Mom paid \$1,500.00 for not long before her death. RP 139.

I am so distraught over these occurrences. Mom's home was not for sale. RP 61. Might does not make right. It is not fair that Moms home was taken from me. RP 53, 66 and RP 138-144. I have received much comfort from it and will feel better when I can continue to care for it as she did.

E. Conclusion

Based on the undisputed evidence of adverse possession, this court should quiet

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title in the subject property in the estate of Virginia ShirLee Badger to Maria Joyce.

In the alternative, this court should remand for findings regarding adverse possession to the trial court. The court comments in Memorandum Decision on Trial that the distribution of ownership does not give the McNeffs any more right to live in the dwelling than me. I don't know how I could be guilty of Unlawful Detainer and owe rent in my own (Mom's) home. I will need a survey to avoid further trespass disputes and encroachments onto the property. RP 146 and RP 172-173.

RCW 7.28.083(3) The prevailing party in an action asserting title to real property by adverse possession may request the court to award costs and reasonable attorneys' fees. The court may award all or a portion of costs and reasonable attorneys' fees to the prevailing party if, after considering all the facts, the court determines such an award is equitable and just.

Respectfully submitted,
August 6, 2015

A handwritten signature in black ink, appearing to read "Maria Joyce", with a long horizontal flourish extending to the right.

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COURT OF APPEALS FOR DIVISION II STATE OF WASHINGTON

WILLIAM M. McNEFF and
ARACELI McNEFF,

No. 46380-6-II

Respondent,

CERTIFICATE
OF SERVICE

v.

MARIA JOYCE

Appellant.

The undersigned hereby certifies that on August 6, 2015 one original and one copy of the following:

1. Brief of Appellant Maria Joyce/Pro Se
2. Proof of Service.

was served upon The Court of Appeals for Division II, State of Washington, 950 Broadway, Suite 300, Tacoma, WA 98402 and for Nelson Law Firm PLLC 1717 Olympia Way Ste. 204, Longview, WA 98632 attorney for respondents, via United States Postal Service.

Signed August 6, 2015

A handwritten signature in cursive script, appearing to read "Maria Joyce", followed by a long horizontal flourish.

Maria Joyce

EDWARD PENOYAR ATTORNEY AT LAW

August 06, 2015 - 2:31 PM

Transmittal Letter

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